THE CORPORATION JOURNAL

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THE CORPORATION TRUST COMPANY AND AFFILIATED COMPANIES

The policy of The Corporation Trust Company in all matters relating to the incorporation, qualification, statutory representation, and maintenance of corporations, is to deal with members of the bar, exclusively.

Tangible vs. Intangible Personalty

On April 16, 1928 the United States Supreme Court decided in Blodgett, Tax Commissioner, vs. Silberman, et al., Executors, a case involving the Connecticut inheritance tax law, that the five classes of property listed below constitute intangible personalty and so that in respect of such items in the estate of a decedent dying a resident of Connecticut the Connecticut tax applies.

1. Decedent's interest as a general partner in a New York limited partnership, buildings and land being included in the firm's holdings.

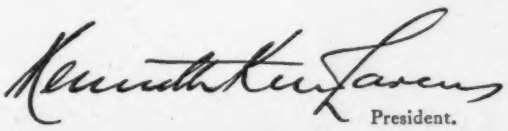
2. United States bonds payable to bearer and United States certificates of indebtedness in a New York safe deposit box and never in Connecticut.

3. Shares of stock of corporations organized under laws other than those of Connecticut the certificates being kept in the New York safe deposit box.

4. A deposit in a New York savings bank.

5. Life insurance payable to the decedent's estate.

A small amount of cash (notes and coin) in a New York safe deposit box was held to be tangible personalty and so, being located outside of the state, is not within the purview of the Connecticut taxing statute under the Frick decision.



President.

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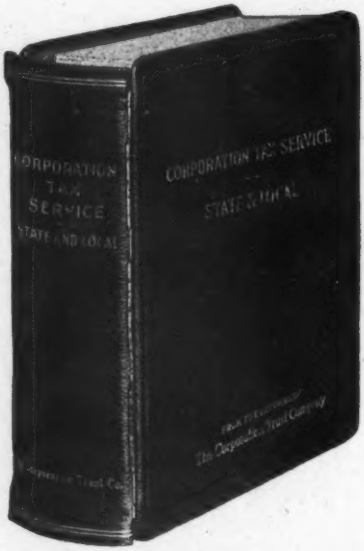
The Corporation Tax Service

[*State and Local*]



FOR each different state desired by the subscriber, this Service presents and keeps constantly up to date the statutory and official requirements with respect to all taxes levied on or payable by ordinary business corporations, and all reports required to be filed by such corporations. For each tax it shows of what corporations that tax is required, the exemptions, basis of tax rate, when to be paid and to whom, how to obtain extensions, how and where to appeal from the assessing body or official, reports required and where and when to be filed, and all the applicable official opinions, rulings, definitions and court decisions, and text of all governing law sections. Write today for details and prices.

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The Corporation Trust Company of America

7 West Tenth Street, Wilmington, Delaware

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Edited by John H. Sears of the New York Bar

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The Corporation Journal is published by The Corporation Trust Company monthly, except in July, August and September. Its purpose is to provide, in systematic and convenient form, brief digests of significant current decisions of the courts, and the more important regulations, rulings or opinions of official bodies, which have a bearing on the organization, maintenance, conduct, regulation, or taxation of business corporations. It will be mailed regularly, postpaid and without charge, to lawyers, accountants, corporation officials, and others interested in corporation matters, upon written request to any of the company's offices (see next page).

When it is desired to preserve the Journal in a permanent file, a special ring binder will be furnished at cost ($2) and thereafter, before mailing, each copy will be punched to fit the binder.

Contents for May

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Public Utility Law Service
Consolidated U. S. Income Tax Laws
U. S. Federal Tax Cases
The National Income Tax Magazine

Foreign Corporations in South America*

(*Continued from the April number.*)

Chile.

Foreign stock companies may not have agents in Chile without authorization of the President of Chile. Agents so acting without authority are personally liable. The petition for authorization must be accompanied by the following: (a) An authentic copy, translated into Spanish and viséed by the Chilean consul, of the articles of incorporation of the company, of the by-laws, and all other documents relating to subscription of the capital; and also a certificate showing that the company was legally organized. (b) General power of attorney with full authority given to the agent in Chile, from which it must be evident that the agent operates under direct responsibility of the company and with authority to operate in its name. (c) A statement of payments made by shareholders. (d) Proof of competence of company. (e) An authorized copy of the last balance sheet. The applicant holding the power of attorney must give the following: (a) The name adopted in Chile and the purpose, in Spanish. (b) A statement that the company is familiar with the Chilean laws and regulations governing its agencies, operations, contracts, and obligations. (c) A statement that the company's property is subject to Chilean laws, especially in so far as this may be necessary for compliance with obligations to be met in Chile. (d) An agreement by the company to establish a contingent fund of securities which are kept in Chile and may be realized upon there for the meeting of obligations within the country, the amount of this fund to be determined by the President of the Republic and to be accumulated from the net profits as shown by the annual balance sheets. (e) An agreement to publish in the Diario Oficial an authorized and legalized copy of the annual balances. (f) A statement of the amount of its working capital in Chile and the manner and date of the actual acquisition. (g) A statement that it will inform the President of the Republic of every modification of the company's articles of organization and will certify annually to the existence of the company. (h) A statement that it will submit to the supervision of the President of the Republic in the same manner as domestic corporations.

Columbia.

Foreign corporations establishing enterprises of a permanent character in Columbia must legally register within six months following their engaging in business, the documents attesting to their existence and their by-laws in the office of a notary in the district where their principal office is located. A power of attorney to their general agent in Columbia must be registered in like manner. These documents must be authenticated by a diplomatic or consular representative of Columbia.

*The pamphlet "The Juridical Status of Foreign Corporations in the American Republics," referred to in the first of this series of articles which appeared in the April Journal and which is the source thereof, may be obtained from the Superintendent of Public Documents, Government Printing Office, Washington, D. C., by remitting 20 cents to that official by post-office money order (stamps will not be accepted by him).

Domestic Corporations.

California.

By-law providing that corporation's stock before being transferable must first have been offered for sale to the corporation is invalid. Action is against the president of a corporation for the recovery of liquidated damages on account of his refusal to transfer on the books of the corporation certain of its shares purchased in the open market by the plaintiff and to issue to him a certificate therefor. It was claimed as excuse for such refusal that the provision of a by-law that no share is transferable unless it has first been offered for sale to the corporation had not been complied with. The California District Court of Appeals, First District, Division 1, in affirming the judgment below for plaintiff says: "It is the rule in California that a corporation is not authorized to purchase its own stock except as provided by statute unless the transaction be necessary to save itself from loss * * *. The cases cited clearly show that, except under well-defined conditions, such purchases are not authorized, and that a by-law which requires or purports to authorize the officers of a corporation to make purchases of its own capital stock except under those conditions is inconsistent with the provisions of the statute and void. Moreover, the power to make by-laws is subject to the condition that they must not be unreasonable in their practical application; and, as the law neither does nor requires idle acts, a by-law which prescribes, as a condition to the right to transfer stock, that an offer be made the acceptance of which is forbidden is manifestly unreasonable and consequently invalid." Mancini vs. Patrizi, 262 P. 375. Devoto, Richardson & Devoto, of San Francisco, for appellant. J. J. Dunne, of San Francisco, for respondent.

Delaware.

Provisions of California Blue Sky law are without force to invalidate Delaware corporation stock in any event. One Mau, a citizen of California, acting on behalf of himself and others, acquired numerous oil and gas leases and contracts with operators, in Montana. It was decided to organize a Delaware corporation to take over these properties. The offer of the properties for stock in the corporation was by Mau submitted to and accepted by the corporation at its organization meeting in Delaware. Later the offer, slightly modified, was re-submitted to the directors and again accepted by them, at a meeting held in Montana. A book of blank stock certificates was sent to California where the names of those entitled thereto (Mau and his nominee associates) with the number of shares each was to receive, respectively, were filled in; the certificates were then taken to Montana where they were signed and sealed "and presumably the transfer of the properties was made contemporaneously." The certificates were then distributed, some in Montana and some in California. No license was procured by any one concerned for the sale of securities in California as provided by the so-called Blue Sky law of that state.

This action on petition to determine the validity of election of directors involves the voting of certain of those shares at an election of directors held at a stockholders meeting in Montana. It was alleged in answer that the shares had no right to vote since the shares themselves were void, reliance being on the provision of the California act that "Every security issued by any company, without a permit of the commissioner authorizing the same then in effect shall be void." The Delaware Court of Chancery (New Castle county), saying that it is conceded, as it must be, that if the stock was not issued in California the law is not applicable, holds that the stock was not issued in California but in Montana. "The offer was accepted both in the state of Delaware and in the state of Montana. The stock to be given to Mau in exchange for his property was authorized in those states to be issued. It was in law there issued. Possession of a certificate is not essential to the ownership of stock." The court says that although this disposes of the matter and establishes the right to vote the questioned shares it is prompted nevertheless to say further: that it does not believe that California intended by its enactment to declare void the stock issues of any corporation other than those of its own creation; that no doubt the courts of California if called on to construe the section in question would restrict the application of its admittedly general language to the field of its appropriate domestic application, citing in support Miles vs. Woodward, 115 Cal. 308, and referring also to Black vs. Zacharie, 3 How. 483, to Masury vs. Arkansas Nat. Bank, 87 Fed. 381, and to Mackine vs. Nicollett Hotel, Inc., 10 F. (2d) 375; and that "No court has gone so far as to say that the legislative power can extend so far as to operate extra-territorially by way of declaring to be void the stock of a corporation created under the law of another sovereignty." Mau vs. Montana Pacific Oil Co., et al., not yet officially reported. Charles C. Keedy, of Wilmington, for the petitioner. Caleb S. Layton, of Marvel, Layton and Morford, and E. Ennalls Berl, of Ward & Gray, of Wilmington, severally, for the defendants.

Federal.

Unfair competition. "Listerine" is used, among other uses, "as a prophylactic antiseptic and cleanser in certain conditions of the hair and scalp." The manufacturers of this preparation brought suit for injunction and damages based on infringement of trade-mark against the Listerated Company and others, on account of the manufacture and sale of a liquid hair tonic and dandruff remedy under the distinguishing name of "Listerated." Subsequent to its first manufacture a little "Listerine" was added to the compound. The United States District Court for the Southern District of Texas grants the injunction prayed for. In addition to finding technical statutory trade-mark infringement the court sustains the plaintiff's contention of unfair competition, and that the defendant has deliberately set out "to reap where it has not sown, and, like the cuckoo, to lay its eggs in the nest of another bird. * * * Plaintiff insists, and I agree with plaintiff, that defendants' tonsorial infant, conceived as it was in business sin, and brought forth in business iniquity, cannot be cleansed of its original sin by the simple

device of sprinkling over each bottle of it ten drops of listerine, prophylactic and cleansing as they are, but what is needed here is a true regeneration, with a new christening, under a new name." Lambert Pharmacal Co. vs. Listerated Co. et al., 24 F. (2d) 122. William Fraser Small and William Keane Small, of St. Louis, Mo. (Walter H. Walne and Baker, Botts, Parker & Garwood, of Houston, Tex., of counsel), for plaintiff. Andrews, Streetman, Logue & Mobley, of Houston, Tex. (Jesse R. Stone, of Houston, of counsel), for defendants.

Michigan.

Forfeiture of charter for failure to pay privilege tax. Action is by a minority stockholder for the appointment of a receiver, for the winding up of the corporation's affairs, and for an accounting on the theory that the charter was forfeited in 1923 for failure to pay its 1921 and 1922 privilege taxes and that thereupon the corporation's property became vested in the stockholders as tenants in common. Act No. 172, Public Laws of 1923, provides, with retroactive application, that in the event of neglect or refusal of a corporation to file its annual report and pay the privilege fee "the charter of such company shall be void." The secretary of state had declared void the charter of the defendant corporation and the company was marked "out" on his files because of failure to pay the amount of fees asserted by him to be due. There was an exceptional sequence of events subsequent to the attempted forfeiture which, however, need not be recited here. The Supreme Court of Michigan holds that the statutory provision is not self-executing, but requires a judicial proceeding to declare and enforce a forfeiture by the state. The court says: "Our attention has not been called to any case where this question has been considered heretofore by this court. In examining cases in other jurisdictions, we are impressed with the justice of the rule which in these circumstances requires a judicial inquiry to determine the fact of forfeiture. * * * that the failure of the corporation to pay the fees * * * was a cause for forfeiture, which could only be enforced in a judicial proceeding by the state brought for that purpose." As the court found that there had been no forfeiture, and as no other cause of relief was relied on by the plaintiff it dismisses his bill. Turner vs. Western Hydroelectric Co. et al., 216 N. W. 476. Smith, Hunter & Spaulding, of St. Johns, Knappen, Uhl & Bryant, of Grand Rapids, and Chapman & Cutler, of Chicago, Ill., for appellants. Shelby B. Schurtz, of Grand Rapids, for appellee.

New York.

Stolen stock certificate: forged endorsement guaranteed by brokers; suit by owner against company; intervention by brokers. In a suit by a citizen of Massachusetts against a New York corporation to enforce the issuance to her of certificates of stock of the company covering those stolen from her some years previously together with shares representing a stock dividend declared thereon, and the payment to her of the amount of such cash dividends on such stock as had been paid, the New York stock brokers to whom the stolen certificate with forged

endorsement had been sent for sale and who, having sold the shares, guaranteed the forged endorsement, intervened. The United States Circuit Court of Appeals for the Second Circuit "can discover no justification for the intervention." Plaintiff's action was founded on an assertion of a continuing title to her stock. The brokers had no interest in the stock. The right of the company against the brokers could not be asserted in a dependent bill, ancillary to the main suit, but is to be determined in a separate action where lack of diversity of citizenship would be fatal to Federal jurisdiction. The court, modifying the decree of the United States District Court, directs the company to record plaintiff's ownership of the shares covered by the stolen certificate as well as of the shares representing stock dividends and to issue certificates therefor (the stock is listed and may be purchased in the open market), and grants a money judgment for the amount of various cash dividends, with interest. The court does not regard the owner's conduct prior to the theft as negligent as asserted in defense and finds unavailing the defense of laches in not discovering the theft at an earlier date. Prince vs. Childs Co. et al., 23 F. (2d) 605. Reynolds & Goodwin, of New York (John Reynolds, of New York, of counsel), for plaintiff. Barber, Fackenthal & Giddings, of New York (Joseph Diehl Fackenthal, of New York, of counsel), for Childs Co. Charles Franklin, of New York (Charles L. Minor, of New York, of counsel), for Stone, Prosser & Doty.

Texas.

Implied powers of a corporation. The principal question here is whether or not a contract of purchase of cotton seed by a corporation is ultra vires, the charter purpose of the corporation being "constructing or purchasing, operating and maintaining cotton gins." The Commission of Appeals of Texas, Section B, says that while the contract was clearly not within the express powers it does fall within the implied powers. After quoting from decisions the court says: "To crystalize the rule, it may be said the implied powers of a corporation embrace those that are reasonably necessary, according to the most usual methods of that particular business, to the successful prosecution of the specific business authorized, and is not limited to those things indispensably necessary to the business, provided always the benefits to be derived from the contract are direct, and not so indirect as to be remote." It was found to be the custom among gin men to purchase planting seed for distribution among their customers and the court holds the custom to be not only reasonably helpful and necessary but directly contributory to the successful operation of the gin business. "The law has not changed, but conditions have changed, and the very principle that would have forbidden a contract 50 years ago will authorize it today, or vice versa." Kasch vs. Farmers' Gin Co., 3 S. W. (2d) 72. R. E. McKie, of San Marcos, for plaintiff in error. John D. Abney, of Hillsboro, for defendant in error.

Virginia.

Dividends on preferred stock in excess of its specified preference rights. The charter of the Southern Railway Company and certain documents issued by virtue thereof, all constituting the contract between the company and its stockholders, provide for common and preferred stock, and for the payment, in the discretion of the directors, out of the net profits of any year, a non-cumulative dividend of not more than 5% on the preferred stock, and for the payment, after providing for such 5% dividend, from any excess of such annual net profits dividends on any other stock of the company, in the discretion of the directors. It was contended that after the preferred stockholders had received their 5% preference dividend, and after the common stockholders had received a dividend amounting to 5%, such preferred stockholders were entitled to share equally with the common stockholders in any additional distribution of the net profits of any year decided on by the directors. The Supreme Court of Appeals of Virginia affirms the judgment of the court below, adopting the long opinion thereof as its own, for the defendant company to the effect that the preferred stockholders are limited to a 5% dividend in any one fiscal year. Lyman et al. vs. Southern Ry. Co., 141 S. E. 240. Joseph S. Clark, Percy H. Clark, and Paul C. Wagner, all of Philadelphia, Pa., and Christain & Lamb, of Richmond, for appellants. Thomas B. Gay, of Richmond, and S. R. Prince, of Washington. D. C., for appellee.

Wisconsin.

Corporations failing to have a resident officer. The Supreme Court of Wisconsin in an action into the merits of which we need not go, says: "whether or not all of the officers [of a Wisconsin corporation] elected were nonresidents is a matter that concerns the state alone and must be tested in an appropriate action. Private parties cannot invoke the statute or enforce the penalty upon a corporation for failing to have a resident officer within the state." State ex rel. Matre et al. vs. Bergs, 217 N. W. 736. Richard J. Hennessey, Miller, Mack & Fairchild, and Bert Vandervelde, all of Milwaukee, for appellants. Charles F. Millmann, of Milwaukee (Edgar L. Wood, of Milwaukee, of counsel), for respondent.

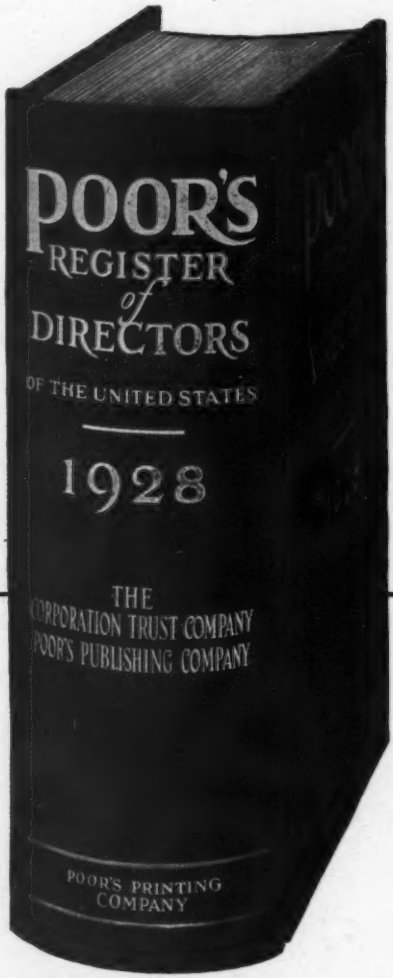
Criminal liability of a corporation for act of its plant superintendent. "The Vulcan Last Company and Cecil Knott were convicted of an attempt to influence the votes of employees of the Vulcan Last Company by threatening to discharge them if they voted contrary to the interests of the company at a referendum election." The Supreme Court of Wisconsin affirms the judgment. Defendant Knott was the plant superintendent. After a meeting of the city's common council of which one of the company's employees was a member, at which meeting a resolution favoring the establishment of waterworks was voted the one negative vote being cast by the employee-councilman, Knott called the employees of the plant before him, stated that any man who voted against the interests of the company would be discharged, and did then

and there discharge the councilman-employee. Thereafter the referendum election was held. Section 103.18, Stats. 1925, provides that no "person" shall by threats to discharge, etc., attempt to influence an employee's vote at an election. Corporations must of necessity act through their agents. A corporation is a "person," in law. "In the case at bar Mr. Knott was the superintendent and manager of the plant, who had full authority to hire and discharge men. * * *. Under the well-established modern rule the threats made by Mr. Knott to discharge men who voted against the interests of the company subjected the corporation to criminal liability, even though the attempt to influence the votes of the employees by making these threats had not been authorized by the corporation." Vulcan Last Co. et al. vs. State, 217 N. W. 412. Eberlein & Larson, of Shawano, and J. A. Walsh, of Crandon, for plaintiff in error. John W. Reynolds, Atty. Gen., J. E. Messerschmidt, Asst. Atty. Gen., Harold Krueger, Dist. Atty., of Crandon, and G. F. Clifford, Asst. Dist. Atty. of Green Bay, for the State.

Foreign Corporations.

Illinois.

Interpretation of Section 95 of the General Corporation Act. The section reads: "Foreign corporations *entitled to transact business in this state at the time this act takes effect* * * * shall be entitled to all the rights and privileges and shall be subject to all the limitations, restrictions, liabilities and duties as are prescribed herein for foreign corporations *admitted to transact business in this state under this act.*" In connection with the usury laws of Illinois the Supreme Court of Minnesota was called on to interpret Section 95 of the General Corporation Act of Illinois quoted above and in doing so proceeded "with embarrassment because, counsel assure us, there is no construction of the supreme or any other court of Illinois." The debtor corporation involved is a Minnesota corporation not admitted to do business in Illinois. The loans in question were made in Illinois, isolated transactions. The question is whether the expression first appearing in italics in the quoted section is intended to apply to foreign corporations engaging in business of an interstate nature only in Illinois or in single isolated transactions there, or to those foreign corporations as were lawfully admitted (under preceding statutes) to do business in Illinois at the time of the enactment. The court holds that the latter is the correct interpretation thus placing previously domesticated foreign corporations on a parity with those coming in under the new law. Gilbert vs. Fosston Mfg. Co. et al., 216 N. W. 778. Snyder, Gale & Richards, of Minneapolis, and Barthell & Rundall, of Chicago, Ill., for appellant. Fowler, Carlson, Furber & Johnson, of Minneapolis, Arthur Christofferson, of St. Paul, Lew C. Church, of Minneapolis, Wm. P. O'Brien and F. W. Manthey, both of St. Paul, Shearer, Byard & Trogner, of Minneapolis, and Tom J. McGrath, of St. Paul, for respondent.



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Missouri.

On "doing business" by a foreign corporation. Plaintiff is a South Dakota corporation engaged in the manufacture and sale at wholesale of merchandise, with a general office in Minneapolis. It is not licensed to do business in Missouri. It entered into a contract of sale with a retailer (Meyer) in Missouri for the outright sale to him of merchandise with the privilege of return within 30 days for repurchase by the manufacturer at the original invoice price less transportation. Meyer furnished a bond guaranteeing payment under the contract. The guarantors are the parties defendant in the action on certain notes given in compromise by them after default by Meyer. Certain of the manufacturer's wares were in the hands of another Missouri retailer (Law) by purchase by him. By agreement some of this merchandise was turned over to Meyer, he being charged and Law credited. The charge for these transferred goods was included in the compromise note settlement referred to above. A defense was set up that as the plaintiff was a foreign corporation doing business in Missouri without license it could not maintain the action in the state courts. The Kansas City Court of Appeals (Missouri) affirms the judgment below for the plaintiff, saying that procuring the original contract of sale and the contract of guaranty and entering into the compromise agreement did not amount to "doing business" in Missouri (citing Heinrich Chemical Co. vs. Herman, 251 S. W. 162, and Shields vs. Chapman, 240 S. W. 505), and that the respondent had a right to accept Meyer as its debtor in place of Law and as the proposition looking to the transfer of the goods from Law to Meyer was received and acted on by the respondent in Minneapolis this did not constitute "doing business" in Missouri. Heinrich Chemical Co. vs. Welch et al., 300 S. W. 1001. John D. Taylor, of Keytesville, for appellants. Roy McKittrick, of Salisbury, for respondent.

New York.

Action by foreign corporation on contract entered into by it, the corporation having previously, at least, done business in New York without authority. Plaintiff's assignor is a stock corporation organized under the laws of the Dominion of Canada. Action is on a note. Prior to the time the note was given the corporation had been doing business in New York without having secured authority. The New York Supreme Court, Appellate Division, First Department, reverses the judgment below and orders a new trial saying that "whether it was still doing business when the note was given, or had ceased to do business here for some time prior thereto, fairly presented a question of fact [which required submission to the jury]. The learned trial justice dismissed solely upon the ground that, as it was conceded that plaintiff's assignor had once done business here without authority, it was forever after barred from maintaining an action on any contract made here, even though at such time it had ceased to do business. This ruling was based upon the authority of International Fuel & Iron Corp. vs. Donner Steel Co., 242 N. Y. 224, 151 N. E. 214. We think the authority

relied upon may not be so extended. * * * we think * * * that the court intended to hold merely that it was only upon a contract made at a time when the corporation is actually doing business here without having secured a certificate that it is precluded from maintaining an action thereon." So too, the court says, there should have been submitted the further question whether or not "if it was doing business, such consisted of business in the nature of foreign commerce. If so, of course, the statute relied upon by the defendant would have no application." Stephenson vs. Wiltsee, 227 N. Y. S. 230. William L. Wemple, of New York (Edwin D. Worcester, of New York, on the brief), for appellant. Kohlman & Austrian, of New York (Carl J. Austrian, of New York, of counsel, and Saul J. Lance, of New York, on the brief), for respondent.

Texas.

On "doing business" by a foreign corporation; bringing of actions. The appellant, here, is a Louisiana corporation, engaged in the business "of manufacturing power fixtures operated by electricity and of repairing electrical machinery," having no permit to do business in Texas. Suit was brought by the corporation to recover judgment for an amount claimed to be due for fixtures furnished and labor performed by it to and for a resident of Texas. For present purposes the question is whether the corporation's activities in this instance were interstate in nature as claimed by the corporation or of a purely local character. The Court of Civil Appeals of Texas (Texarkana) affirms the judgment below, dismissing the suit because of noncompliance, saying: "It is believed that the alleged undertaking plainly amounts to the doing of local business in the state requiring a permit to do business in accordance with the statute. [Citing numerous cases in various jurisdictions.] The materials and parts furnished and the labor done were in repair and putting in running order of property already in the state that needed mending and adjusting. The undertaking to provide the material and parts and to do the work of "repairing, over-hauling, and putting in order the electrical machinery" of the gin must be regarded in its entirety. The sale and delivery of the electrical material and the stator coils apparently would not have been a performance of the agreement, entitling appellant to enforce the agreement." Elliott Electric Co. vs. Clevenger, 300 S. W. 91. Seale & Dennman, of Nacogdoches, for appellant. S. W. Blount, of Nacogdoches, for appellee.

Virginia.

On service of process on foreign corporations. In an action in debt against the American Railway Express Company on a judgment for a plaintiff shipper, for the value of a lost shipment, against the Southern Express Company, the Supreme Court of Appeals of Virginia affirms the judgment of the court below for the plaintiff. (The American company is the successor of the Southern.) In the case of the Southern company service of process was on its previously duly appointed agent for such service, which appointment had never been recalled or revoked. How-

ever, at the time of the service the Virginia statutes provided that foreign corporations should appoint the Secretary of State as their statutory agent; this the Southern had not done, asserting that as it was not then engaged in business in Virginia the appointment of an agent was not called for; hence the claim was made that the judgment was obtained without due process of law, since the service was not made as by the statute provided. The Supreme Court of Appeals of Virginia holds that the contention that it was not necessary to designate a statutory agent is unsound since the appointment of its statutory agent was not revokable though the company had withdrawn from active business in the state if it still had contracts outstanding in Virginia; and that the statute providing for the appointment of the secretary of state is not self-enacting, "it simply required foreign corporations doing business in Virginia to appoint the secretary of state of the commonwealth as their statutory agent in Virginia. It is inconceivable that such a corporation could, by a failure to comply with the requirements of the statute, evade the process of the courts in Virginia." Other contentions on behalf of both the Southern and the American need not be recited here. American Ry. Express Co. vs. Fleishman, Morris & Co., Inc., 141 S. E. 253. Wyndham R. Meredith, of Richmond, for plaintiff in error. A. W. Patterson, of Richmond, for defendant in error.

Washington.

Mandamus granted to compel the secretary of state of Washington to issue a license to a Delaware corporation to do business in Washington. The application of the relator, a Delaware corporation, for a license to do business in Washington was refused because it has two classes of common stock as well as preferred stock; because there is no provision under the Washington law for the issuance of common stock of different classes by domestic corporations; and because the state constitution provides that foreign corporations shall not be allowed to do business in the state under more favorable conditions than those applicable to domestic corporations. The Supreme Court of Washington grants the prayed for writ of mandamus to compel the Secretary to issue the license since "the question here is not as to differences in terms upon which business is to be done, but merely differences as to the internal construction and operation of the corporation." The court says that "this question has been squarely presented and extensively considered by at least three supreme courts of this country, and they have all come to the same conclusion, that, under constitutional and statutory provisions such as obtain with us, there is no justification for denying admission to a foreign corporation merely because, under the laws of its organization, its stock structure may be such an one as could not be erected, had that corporation sought to have its origin in the state in which it is seeking permission to do business. * * *. (North American Petroleum Co. vs. Hopkins, 105 Kas. 161, 181 Pac. 625; State ex rel. Standard Tank Car Co. vs. Sullivan, 282 Mo. 261, 221 S. W. 728; Commonwealth Acceptance Corporation vs. Jordan, 198 Cal. 618, 246 Pac. 796.)" Ex rel. Fibreboard Products, Inc. vs. Hinkle, as Secretary

of State, not yet officially reported. C. A. Riddle and James Kiefer, for relator. The Attorney General and E. W. Anderson, Asst. Atty. Gen'l, for respondent.

Wyoming.

Action by foreign corporation in Federal court. The plaintiff, a New Mexico corporation, brought its action in the United States District Court for the District of Wyoming against the defendant, a Utah corporation, to recover alleged damages on account of an assembling shipment of pelts within Wyoming for ultimate shipment to a point without the state. The court held that plaintiff's admitted failure to comply with the constitution (Art. 10, §5) and statute (§5074, Comp. Stats. 1920) of Wyoming (acceptance of the constitution before transacting business in the state) left it without right to maintain the action. The United States Circuit Court of Appeals, Eighth Circuit, says that this ruling was wrong; that neither the constitution nor the statute provide that a contract entered into by a foreign corporation which has not complied with the state statute is void; that the state courts have not held such a contract to be void but voidable only in the sense of being nonenforceable in the state courts if noncompliance is pleaded; and that such a contract not having been made void by the terms of the constitution and statute or by decision of the highest court of the state holding that the constitution or statute make it void, a plaintiff may sue on such a contract in a Federal court though denied the right so to do in a state court. The court says that in view of its holding, the question whether the shipment was interstate or intrastate is an immaterial one. Louis Ilfeld Co. vs. Union Pac. R. Co., 23 F. (2d) 65. Albert L. Vogl, of Denver, Col. (Marion A. Kline, of Cheyenne, on the brief), for plaintiff-in-error. Herbert V. Lacey, of Cheyenne (John W. Lacey, of Cheyenne, on the brief), for defendant-in-error.

Taxation.

Delaware.

License fee or franchise tax based on "authorized" capital stock. The charter of the defendant corporation, here, authorized it to issue 50,000 shares of Class A, no par value, stock, having certain preferential privileges, and 100,000 shares of no par value common stock; the privilege was granted of converting at any time Class A stock into common stock; Class A stock so converted was to be canceled and never reissued; a sufficient amount of common stock was to be held in the company's treasury at all times to meet conversion demands. In its annual report filed with the Secretary of State for the tax year here in question the company reported that it was authorized to issue 150,000 shares of stock. The Delaware statutes provide for the assessment and payment of an annual license fee or franchise tax based on the authorized capital stock "determined from the annual report." The tax was accordingly assessed on the basis of 150,000. The company refused to

pay, claiming that the proper basis was 100,000 shares. With this contention the Superior Court of Delaware (New Castle) agrees, saying that "authorized capital stock" really means "the amount of money that the corporation is authorized to raise by the sale of its stock for use in its corporate business"; that the corporation "can at no time have outstanding more than 100,000 shares of stock," and that whether such stock consists of 50,000 Class A shares and 50,000 common shares, or 100,000 common shares only, will not affect the capital that can be raised and used in the business. The court further holds, in effect, that it is facts that control rather than misstatements in reports, and that, as has already been held, as the Secretary of State is not bound by the statements set forth in a report filed, so too the report is not under all circumstances binding on the corporation. State vs. R. H. Perry & Co., 140 A. 474. Charles C. Keedy, Sp. Deputy Atty. Gen., for the state. Howard Duane (of Marvel, Layton & Morford), of Wilmington, for defendant.

Federal: United States Supreme Court: Flexible tariff. In J. W. Hampton, Jr. & Co. vs. U. S., decided April 9, 1928, the Supreme Court upholds the flexible tariff provision of the Act of September 21, 1922. (The questioned increase of rate, by proclamation of the President, was on barium dioxide, 4¢ to 6¢ per pound.) It was contended that the provision is unconstitutional because delegating legislative power to the Executive, and that it is invalid since the avowed purpose of the legislation is to protect the industries of the United States while the constitution gives power to lay custom duties for revenue only.

Michigan.

Intangibles are to be excluded in the computation of the privilege tax in the case of foreign corporations. Plaintiff is a Maryland corporation licensed to do business in Michigan. The corporation privilege tax under the Michigan law is imposed on "each dollar of its paid-up capital and surplus" but in the case of foreign corporations the computation is made on the proportion of the corporation's property owned and used in Michigan in the ratio that such property bears to the entire property of the corporation, and in no event is property located without the state to enter into the computation of the net amount of the capital or surplus on which the computation of the tax is to be made. At the time of making its report for 1926 the corporation had money in Michigan banks and cash on hand in Michigan, had money due it on land contracts covering property located in Michigan, and had a large amount in accounts receivable. Plaintiff omitted all of the foregoing items in computing its tax on the ground that the situs thereof was at its home office in Maryland. The secretary of state included all of the items. On appeal the Corporation Tax Appeal Board affirmed the action of the secretary of state. The Supreme Court of Michigan holds that all of the items in question constitute intangible personalty, that property of that description has its situs at the domicile of the owner, and so that no one of the items may be considered as any part of the basis on which the privilege tax is to be computed. In re Dodge Bros., Inc., 217 N. W.

777. Beaumont, Smith & Harris and Archibald Broomfield, all of Detroit (John W. Eckelberry, of Detroit, of counsel), for plaintiff. William W. Potter, Atty. Gen., and Harry A. Metcalf and Kit F. Clardy, Asst. Attys. Gen., for defendant.

Missouri.

Valuing no-par value stock at $100 for foreign corporation franchise tax purposes approved. The Missouri statutes provide for the payment of an annual franchise tax by foreign corporations based on the par value of the capital stock and surplus employed in the state, and, further, that for the purposes of the tax each no-par value share shall be considered the equivalent of a share having a nominal or par value of $100. The respondent here is a Delaware corporation engaged in business in Missouri. For the year 1926 a tax was assessed against the corporation on the basis stated above. It paid to the state a much smaller amount on account of the tax basing the computation on the actual value of the no-par value shares employed in the state and declined to pay the difference for which the state brought this action. The company prevailed below but on appeal the Supreme Court of Missouri reverses the judgment, and sustains the tax, holding that there is no discrimination or lack of uniformity since all corporations having no-par value stock are similarly treated. The court calls attention to the fact that in the case of domestic corporations no-par value stock is valued at $100 per share for franchise tax purposes and says that foreign corporations are not entitled to preferential treatment, and further remarks that it is not contended and it does not appear that the tax as imposed is confiscatory in effect, or that it operates to tax property outside of Missouri, or that it effects a burden on interstate commerce. State vs. Pierce Petroleum Corporation, 2 S. W. (2d) 790. North T. Gentry, Atty. Gen., and Claude E. Curtis and W. E. Sloat, Sp. Asst. Attys. Gen., for the State. Fordyce, Holliday & White, of St. Louis, for respondent. Powell C. Groner, of Kansas City, Bennett C. Clark, of St. Louis, and Watson, Gage & Ess, of Kansas City, for Kansas City Public Service Co., Amicus Curiae.

Washington.

Annual license fee of foreign corporation based on authorized capital stock held constitutional. Action on the part of a Maine corporation to enjoin the enforcement of certain Washington statutes imposing "a filing fee" and an "annual license fee" in the case of foreign corporations. The United States District Court, W. D., Washington, S. D., grants the state's motion to dismiss the bill, with a long opinion in which are cited a great mass of cases involving the several aspects of the controversy. One judge dissents. It was contended that the statutes complained of if enforced will deprive plaintiff of property without due process of law, and that they deny to plaintiff equal protection of the law and violate the commerce clause of the Constitution. The principal controversy is in connection with the annual license fee (maximum of $3,000) which is imposed in the case of foreign as well as

domestic corporations on the basis of authorized capital stock. It is conceded that plaintiff does intrastate business in Washington but the amount thereof in comparison to its total business is exceedingly small. The authorized capital is $45,000,000, of which but $29,800,000 has been issued. The particular annual license fee in question is $580 in amount. The court says: "The effect of the foregoing decisions is that, where the maximum excise fixed by the law does not itself appear to be unreasonable in amount, and the method of its computation ignores as a basis intrastate commerce, and takes for that purpose the amount of the authorized capital stock, that fact alone is not sufficient to invalidate the tax, but that the result, the excise demanded under the statute, must bear no reasonable relation to the intrastate business transacted before such is the effect. It is a well-known rule of law, even where there is a positive statutory prohibition of restraint of trade, that all restraint is not prohibited." In the instant case the court states that the bill fails to show any such substantial burden imposed by the statutes on plaintiff's interstate commerce as to warrant enjoining the collection of the fees demanded. Cudahy Packing Co. vs. Hinkle, Secretary of State of Washington, et al., 24 F. (2d) 124. Palmer, Askren & Brethorst, of Seattle, for plaintiff. John H. Dunbar, Atty. Gen., and L. B. Donley, Asst. Atty. Gen. for defendants.

Delaware Corporations Organized.

516 corporations were organized under the laws of Delaware from March 20 to April 20, as against 483 for the preceding 30-day period, and 475 for the corresponding period of one year ago.

Some Important Matters for May and June

This calendar does not purport to cover general taxes or reports to other than state officials, or those we have been officially advised are not required to be filed. *The State Report and Tax Service* maintained by *The Corporation Trust Company System* sends timely notice to attorneys for subscribing corporations of report and tax matters requiring attention from time to time, furnishing information regarding forms, practices and rulings.

ARIZONA—Report to Corporation Commission and Registration Fee due during June. Domestic and Foreign Corporations.

CALIFORNIA—Corporation Franchise Tax due on first Monday in July.—Domestic and Foreign Corporations.

DELAWARE—Annual Franchise Tax due between April 1 and July 1.—Domestic Corporations.

DOMINION OF CANADA—Annual Summary due between April 1 and June 1.—Domestic companies having capital stock.

FLORIDA—Annual list of officers and directors due on or before June 1.—Domestic and Foreign Corporations.

ILLINOIS—Annual License Fee or Franchise Tax due on or before July 1

but may be paid up to July 31 without penalty.—Domestic and Foreign Corporations.

INDIANA—Corporation Report due between June 1 and July 31—Domestic Corporations.

IOWA—Annual Report due between the first day of July and the first day of August.—Domestic and Foreign Corporations.

Additional statement due at the time of making the Annual Report in July.—Foreign Corporations.

MAINE—Annual Tax Return due on or before June 1.—Domestic Corporations.

MISSISSIPPI—Annual Report due on or before June 30.—Domestic and Foreign Corporations.

MONTANA—Annual Report due in April or May.—Foreign Corporations.

Annual License Tax based on Net Income due between June 1 and June 15.—Domestic and Foreign Corporations.

NEBRASKA—Annual Report and Fee due on or before July 1.—Domestic Corporations.

NEVADA—Annual List of Officers due on or before July 1.—Domestic and Foreign Corporations.

NEW JERSEY—Annual Tax Return due on or before first Tuesday of May.—Domestic Corporations.

NEW YORK—Annual Return of Net Income on or before July 1.—Domestic and Foreign Business Corporations.

NORTH CAROLINA—Capital Stock Report to determine amount of franchise tax due between May 1 and July 1.—Domestic and Foreign Corporations.

OREGON—Annual Statement due during June.—Domestic and Foreign Corporations.

RHODE ISLAND—Corporate Excess Tax due on or before first day of July.—Domestic and Foreign Corporations.

TENNESSEE—Annual Report and Franchise Tax due on or before July 1.—Domestic and Foreign Corporations.

UNITED STATES—Second Installment Income Tax due June 15.—Domestic Corporations and Foreign Corporations having an office or place of business in the United States.

WASHINGTON—License Fee due on or before July 1.—Domestic and Foreign Corporations.

WEST VIRGINIA—Tax statements due on or before July 1.—Domestic Corporations.

Annual License Tax due on or before July 1.—Domestic and Foreign Corporations.

Fee to State Auditor as Attorney in Fact due on or before June 30.—Foreign and Non-Resident Domestic Corporations.

WYOMING—Annual sworn statement and license tax due on or before July 1.—Domestic and Foreign Corporations.

The Corporation Trust Company's Supplementary Literature

In connection with the various departments of its business The Corporation Trust Company publishes the following supplementary pamphlets and forms, any of which it is always glad to send without charge to readers of The Journal:

Analysis of Recent Amendments to Delaware Corporation Laws. Complete text of these important new features together with explanation of their effect.

What Constitutes Doing Business. A 128-page pamphlet containing brief digests of 301 decisions selected from those in the various states as indicating what is construed in each state as "doing business."

Six Points to Watch in Incorporation. A valuable reminder for attorneys when planning a corporate structure or drafting incorporation papers.

Two Notable Certificates of Incorporation. Certificate of Standard Oil Company of California, and that of Tide Water Associated Oil Company.

Certificate of Incorporation of Pullman Incorporated. Pullman Incorporated was the first internationally known corporation to take advantage of the new features of the Delaware law as amended in 1927, and its charter will therefore be of great interest to lawyers.

Safeguarding Stock Transfers. Dealing with the many pitfalls in transferring stock on a corporation's books.

Delaware Corporations. Presents in convenient form a digest of the Delaware corporation law, its advantages for business corporations, the attractive provisions for non par value stock, and a brief summary of the statutory requirements, procedure and costs of incorporation. Revised to January, 1928.

When Doing Business Is Illegal. A brief discussion, illustrated by many actual examples taken from the court records of various states, of the difference between "Interstate" and "Intrastate" business.

Revenue Act of 1926. A reprint of the law as furnished to subscribers to The Federal Tax Service of this Company.

Amendments to New Jersey Corporation Laws. Full text of the ten amendments passed at the legislative session of 1927.

Transfer Requirements Chart. This supplement to The Stock Transfer Guide and Service shows the classifications into which requests for stock transfers are divided and how the principal requirements for each classification may be determined, either by the transfer agent or the individual desiring transfer made.

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